IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 22853 of 2007(U)

OS.281/2006 of PRL.M.C.,TRIVANDRUM

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PETITIONER:

P.ANILKUMAR,
AGED 34 YEARS, S/O PARAMESWARAN NAIR,
SOWPARNIKA, CHEMPAZHANTHI, ULIYAZHTHURA VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SMT.K.GIRIJA

RESPONDENTS:

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1. V.VENUGOPALAN NAIR,
AGED 52, S/O.CHELLAPPAN PILLAI, ANJALI BHAVAN,
KUTTIKKADU, KATTAYIKONAM P.O.,
THIRUVANANTHAPURAM.

2. L.RADHAMMA,
AGED 61, W/O SUKUMARAN NAIR,
KUTTIKKADU VEEDU, KATTAYIKONAM P.O.,
AYIROORPARA VILLAGE,
THIRUVANANTHAPURAM.

3. VALSALAKUMARI,
AGED 40, D/O RADHAMMA, KUTTIKKADU VEEDU,
KATTAYIKONAM P.O., AYIROORPARA VILLAGE,
THIRUVANANTHAPURAM.

4. MOHANAN NAIR,
AGED 48, S/O.ACHUTHAN PILLAI,
ASWATHI BHAVAN, KUTTIKKADU,
KATTAYIKONAM, THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 22853 OF 2007 U

Dated this the 25th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the orders in Exts.P6 and P7. I.A.5414/07 was filed to remove the suit on the ground that a commission report has to be obtained and I.A.5415/07 was filed for issuance of a commission. Learned counsel for the writ petitioner in fairness submits before me that already a commissioner has inspected the property and the writ petitioner has filed objections and in the said objection he has incorporated a prayer to set aside the commissioner's plan and report. As on today, by virtue of the decision of this Court it is not advisable to have successive commissions being issued in the same case without setting aside the previous commissioner's plan and report. Therefore, the prayer for issuance of a new commission may not strictly lie in the light of the fact that another commissioner's plan and report is already there in the bundle. It is submitted by the learned counsel that she intends to file an application for setting aside/remitting commissioner's plan and report and the court below may be directed to consider and dispose of the same and be directed to proceed with the suit in accordance with law. The prayer appears to be reasonable

and genuine and therefore I set aside the orders passed by the learned Munsiff as Exts.P6 and P7 and direct the writ petitioner to file appropriate applications for remitting/setting aside the commissioner's report as the petitioner wants and then direct the Munsiff to dispose of the same in accordance with law, after giving due notice to the other side and then include the suit in the list and dispose of the same. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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